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This Users' Manual is issued as an operational tool.

This Manual contains:

- a) Regulations adopted by the California Department of Social Services (CDSS) for the governance of its agents, licensees, and/or beneficiaries
- b) Regulations adopted by other State Departments affecting CDSS programs
- c) Statutes from appropriate Codes which govern CDSS programs; and
- d) Court decisions
- e) Operational standards by which CDSS staff will evaluate performance within CDSS programs.

Regulations of CDSS are printed in gothic type as is this sentence.

Handbook material, which includes reprinted statutory material, other department's regulations and examples, is separated from the regulations by double lines and the phrases **"HANDBOOK BEGINS HERE"**, **"HANDBOOK CONTINUES"**, and **"HANDBOOK ENDS HERE"** in bold print. Please note that both other department's regulations and statutes are mandatory, not optional.

In addition, please note that as a result of the changes to a new computer system revised language in this manual letter and subsequent community care licensing manual letters will now be identified by graphic screen.

Questions relative to this Users' Manual should be directed to your usual program policy office.

Article 1. GENERAL REQUIREMENTS AND DEFINITIONS**87000 GENERAL****87000**

- (a) The licensee shall ensure compliance with all applicable law and regulations.
- (b) The provisions of Chapter 1, General Licensing Requirements shall not apply to Chapter 7.5, Family Homes.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501, 1502, 1530, 1530.5 and 1531, Health and Safety Code.

87001 DEFINITIONS**87001**

The following definitions shall apply whenever the terms are used throughout this chapter.

- a.
 - (1) "Adult" means a person who is 18 years of age or older.
 - (2) "Applicant" means any adult who has made application for an initial or renewal foster family home license.
 - (3) "Authorized Representative" means any person or entity authorized by law to act on behalf of any child. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator or a public placement agency.
- b.
 - (1) "Basic Rate" means the rate charged by a facility to provide basic services. For SSI/SSP recipients, the basic rate means the established nonmedical out-of-home care rate which includes any exempt income allowance but does not include that amount allotted for the recipient's personal and incidental needs.
 - (2) "Basic Services" means those services required by applicable law and regulation to be provided by the licensee in order to obtain and maintain a community care facility license.
- c.
 - (1) "Capacity" means the maximum number of persons authorized to be provided care and supervision at any one time in any licensed facility.
 - (2) "Care and Supervision" means any one or more of the following activities provided by a licensee to meet the needs of the children:
 - (A) Assistance in dressing, grooming, bathing and other personal hygiene.

87001 DEFINITIONS (Continued)**87001**

- (B) Assistance with taking medication, as specified in Section 87075.
 - (C) Central storing and/or distribution of medications, as specified in Section 87075.
 - (D) Arrangement of and assistance with medical and dental care. This may include transportation.
 - (E) Maintenance of house rules for the protection of children.
 - (F) Supervision of children's schedules and activities.
 - (G) Maintenance and/or supervision of children's cash resources or property.
 - (H) Monitoring food intake or special diets.
 - (I) Providing basic services as defined in Section 87001b.(2).
- (3) "Cash Resources" means:
- (A) Monetary gifts.
 - (B) Tax credits and/or refunds.
 - (C) Earnings from employment or workshops.
 - (D) Personal and incidental need allowances from funding sources including but not limited to SSI/SSP.
 - (E) Allowances paid to children.
 - (F) Any other similar resources as determined by the licensing agency.
- (4) "Certified License Pending Home" means a home which has a foster family home license application pending and which has been certified for placement of specific children only, pursuant to Section 87007.1.
- (5) "Child" means a person who is under 18 years of age who is being provided care and supervision in a foster family home, except where specified otherwise in this chapter.

87001 **DEFINITIONS** (Continued)**87001**

- (6) "Child with Special Health Care Needs" means a child who meets all of the following conditions:
- (A) Has a medical condition that requires specialized in-home health care and
 - (B) Is one of the following:
 - 1. A child who has been adjudged a dependent of the court under Section 300 of the Welfare and Institutions Code.
 - 2. A child who has not been adjudged a dependent of the court under Section 300 of the Welfare and Institutions Code but who is in the custody of the county welfare department.
 - 3. A child with a developmental disability who is receiving services and case management from a regional center.
- (7) "Completed Application" means:
- (A) The applicant has submitted and the licensing agency has received all required materials including an approved fire clearance, if applicable, from the State Fire Marshal and a criminal record clearance on the applicant and any other individuals specified in Section 87019.
 - (B) The licensing agency has completed a site visit to the facility.
- (8) "Conservator" means a person appointed by the Superior Court pursuant to the provisions of Section 1800 et seq. of the Probate Code or Section 5350 of the Welfare and Institutions Code, to care for the person, or estate, or person and estate, or another.
- (9) "Control of Property" means the right to enter, occupy, and maintain the operation of the facility property within regulatory requirements. Evidence of control of property may include, but is not limited to the following:
- (A) a Grant Deed showing ownership; or
 - (B) the lease agreement or rental agreement; or
 - (C) a court order or similar document which shows the authority to control the property pending outcome of a probate proceeding or an estate settlement.

87001 DEFINITIONS (Continued)**87001**

- d. (1) "Deficiency" means any failure to comply with any provision of the Community Care Facilities Act (Health and Safety Code 1500 et seq.) and/or regulations adopted by the department pursuant to the Act.
- (2) "Department" is defined in Health and Safety Code Section 1502(b).

HANDBOOK BEGINS HERE

(Department means the State Department of Social Services.)

HANDBOOK ENDS HERE

- (3) "Director" is defined in Health and Safety Code Section 1502(c).

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(Director means the Director of the State Department of Social Services.)

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- (4) "Disability" means a condition which makes a child developmentally disabled, mentally disordered or physically handicapped, and for whom special care and supervision is required as a result of his/her condition.
- e. (1) "Evaluator" means any person who is a duly authorized officer, employee or agent of the department, including any officer, employee or agent of a county or other public agency authorized by the department to license homes.
- (2) "Emergency Approval to Operate" (LIC 9117 4/93) (EAO) means a temporary approval to operate a facility for no more than 60 days pending the Department's decision on whether to approve or deny a provisional license.
- (3) "Evidence of Licensee's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary or a letter from the attending physician or coroner's office verifying the licensee's death.
- (4) "Exception" means a written authorization issued by the licensing agency to use alternative means which meet the intent of a specific regulation(s) and which are based on the unique needs or circumstances of a specific child placed in the home. Exceptions are granted for a particular child and cannot be transferred or applied to other children or other facilities or licensees.

87001 DEFINITIONS (Continued)**87001**

- (5) "Exemption" means an exception to the requirements of Health and Safety Code Section 1522. Exemptions are not transferable.

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- (A) Health and Safety Code Section 1522(g) reads in part:

After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for a license, special permit, or certificate of approval pursuant to subdivision (d), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c).

HANDBOOK ENDS HERE

- (6) "Existing Facility" means a home operating under a valid, unexpired license on the date this chapter becomes effective.
- f. (1) "Family Health Care" means health care which does not require the skills of qualified technical or professional personnel and is provided to a child by the foster parent in accordance with Section 87075(g). When these requirements are met, the family health care that may be provided includes, but is not limited to the following:
- (A) Routine administration of medications such as the administration of suppositories, ointments, lotions, pills, enemas or medications given by liquid medication dispenser, puffer, dropper or nebulizer.
 - (B) Changing ostomy or indwelling urinary catheter bags.
 - (C) Urine and blood glucose testing using a monitoring kit approved for home use.
 - (D) Heart and apnea monitoring when it is simply the case of providing stimulation to the infant/child when the cardiac or respiratory rate falls below a specified rate and not a matter of interpreting a monitor pattern with the intervention based on that interpretation.

87001 DEFINITIONS (Continued)**87001**

- (E) Assistance with procedures self-administered by older children free of severe mental or physical disabilities such as insulin injection and oxygen administration.
- (2) "Foster Family Home" means any home in which 24-hour care and supervision are provided in a family setting in the licensee's family residence for not more than six foster children, exclusive of members of the licensee's family. The total number of foster children may be increased to 8 or more provided the requirements of Section 87020 (Fire Clearance) and the special conditions in Section 1505.2 of the Health and Safety Code are met.

HANDBOOK BEGINS HERE**(A) Health and Safety Code Section 1505.2**

A licensing agency may authorize a foster family home to provide 24-hour care for up to eight foster children, for the purpose of placing siblings or half siblings together in foster care. This authorization may be granted only if all of the following conditions are met:

(A) The foster family is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.

(B) The home is sufficient in size to accommodate the needs of all children in the home.

(C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination.

The licensing agency may authorize a foster family home to provide 24-hour care for more than eight children only if the foster family home specializes in the care of sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above conditions are met.

HANDBOOK ENDS HERE

87001 DEFINITIONS (Continued)**87001**

- g. (1) "Guardian" means a person appointed by the Superior Court pursuant to the provisions of Section 1500 et seq. of the Probate Code to care for the person, or estate, or the person and estate, of another.
- h. (1) "Health Care Professional" means a physician or an individual who is licensed or certified under Division 2 of the Business and Professions Code to perform the necessary client care procedures prescribed by a physician. Such health care professionals include the following: Registered Nurse, Public Health Nurse, Licensed Vocational Nurse, Psychiatric Technician, Physical Therapist, Occupational Therapist and Respiratory Therapist.
- (2) "Home" means a licensed Foster Family Home.
- i. (1) "Individualized Health Care Plan" means the written plan developed by an individualized health care plan team and approved by the team physician, or other health care professional designated by the physician to serve on the team, for the provision of specialized in-home health care.
- (2) "Individualized Health Care Plan Team" means those individuals who develop an individualized health care plan for a child with special health care needs, which must include the child's primary care physician or other health care professional designated by the physician, any involved medical team, the county social worker or regional center caseworker, and any health care professional designated to monitor the specialized in-home health care provided to the child pursuant to the child's individualized health care plan. The individualized health care plan team may include, but shall not be limited to, a public health nurse, representatives from the California Children's Services Program or the Child Health and Disability Prevention Program, regional centers, the county mental health department and where reunification is the goal, the parent or parents, if available. In addition, the individualized health care plan team may include the prospective specialized licensee who shall not participate in any team determination required by Sections 87010.1(a)(1)(C), and 87065.1(a)(1)(B).

87001 DEFINITIONS (Continued)

87001

- (3) "Infant" means a child under two years of age.
- j. (Reserved)
- k. (Reserved)
- l. (1) "License" means authorization to operate a home and to provide care and supervision. The license cannot be transferred to another person or location.
- (2) "Licensee" means the individual having the authority and responsibility for the operation of a home.
- (3) "Licensee's Family" means any relative, as defined in 87001r.(1), or adopted children or persons under guardianship or conservatorship, of the licensee, or the licensee's spouse, who reside in the home.
- (4) "Licensing Agency" means the State Department of Social Services or any state, county or other public agency authorized by the department to assume specified licensing responsibilities pursuant to Section 1511 of the Health and Safety Code.
- m. (1) "Medical Conditions Requiring Specialized In-Home Health Care" means provided that care may be safely and adequately administered in the home:
- (A) A dependency upon one or more of the following when, but for the fact that trained foster parents may provide these services under Welfare and Institutions Code Section 17736, the skills of qualified technical or professional personnel would be required: Enteral feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, oxygen support, urinary catheterization, renal dialysis, ministrations imposed by tracheostomy, colostomy, ileostomy, ileal conduit or other medical or surgical procedures or special medication regimens, including injection and intravenous medication; or
- (B) Conditions such as AIDS, premature birth, congenital defects, severe seizure disorders, severe asthma, bronchopulmonary dysplasia, and severe gastroesophageal reflux when, because his/her condition could rapidly deteriorate causing permanent injury or death, the child requires in-home health care other than, or in addition to, family health care.

87001 DEFINITIONS (Continued)**87001**

- n. (1) "Needs and Services Plan" means a time-limited, goal-oriented written plan which identifies the specific needs of an individual child, including the items specified in Section 87068.2, and delineates those services necessary in order to meet the child's identified needs.
- (2) "Nonambulatory Person" means a person as defined in Health and Safety Code Section 13131.
- (A) A person who uses postural supports as specified in Section 87072(a)(7), is nonambulatory.
- (B) A person is not deemed nonambulatory solely because he/she is deaf, blind or prefers to use a mechanical aid.
- o. (Reserved)

HANDBOOK BEGINS HERE

- (C) Health and Safety Code Section 13131 provides:

"Nonambulatory persons" means persons unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. The determination of ambulatory or nonambulatory status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative in consultation with the Director of Developmental Services or his or her designated representative. The determination of ambulatory or nonambulatory status of all other disabled persons placed after January 1, 1984 who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

HANDBOOK ENDS HERE

- p. (1) "Physical Restraining Device" means any physical or mechanical device, material, or equipment attached or adjacent to a child's body which the child cannot remove easily and which restricts the child's freedom of movement. Restraining devices include leg restraints, arm restraints, soft ties or vests, wheel chair safety bars, and full length bedrails.
- (2) "Physician" means a person licensed as a physician and surgeon by the California Board of Medical Examiners or by the California Board of Osteopathic Examiners.

87001 **DEFINITIONS** (Continued)**87001**

- (3) "PRN Medication" (pro re nata) means any nonprescription or prescription medication which is to be taken as needed.
 - (4) "Provision" or "Provide" means whenever any regulation requires that provision be made for or that there be provided any service, personnel, or other requirement, the licensee shall do so directly or present evidence to the licensing agency that the requirement has been met by some other means.
 - (5) "Provisional License" means a license which is temporary, nonrenewable and issued for a period not to exceed twelve months which is issued in accordance with the criteria specified in Section 87030.
- q. (Reserved)
- r. (1) "Relative" means:
- (A) A person related to the child by birth or adoption within the fifth degree of kinship who, regardless of whether the parent's rights to the child have been terminated or relinquished, is one of the following:
 - 1. Parent (mother, father) sibling (brother, sister), half-sibling (half-brother, half-sister), nephew, niece, uncle, aunt, first cousin, first cousin once removed, or any such person of a preceeding generation denoted by the prefixes grand, great, great-great, or great-great-great.
 - (B) Stepfather, stepmother, stepbrother or stepsister; or
 - (C) The spouse of any person named in (A) or (B) above, even after the marriage has been terminated by death or dissolution.
- s. (1) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of any child in a home.
- (2) "Social Worker" means a person who has a graduate degree from an accredited school of social work.
- (3) "Specialized Foster Family Home" means a licensed foster family home which provides specialized in-home health care to children.

87001 DEFINITIONS (Continued)**87001**

- (4) "Specialized In-Home Health Care" means health care, other than family health care, identified by the child's primary physician as appropriately administered in the home by a health care professional or by a foster parent trained by health care professionals.
- (5) "SSI/SSP" means the Supplemental Security Income/State Supplemental Program which is a federal/state program that provides financial assistance to aged, blind and/or disabled residents of California.
- (6) "Substantial Compliance" means the absence of any serious deficiencies.
- t. (Reserved)
- u. (1) "Unlicensed Community Care Facility" means a facility as defined in Health and Safety Code Section 1503.5.

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1503.5 provides:

A facility shall be deemed to be an "unlicensed community care facility" and "maintained and operated to provide nonmedical care" if it is unlicensed and not exempt from licensure and any one of the following conditions is satisfied:

- (1) The facility is providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (2) The facility is held out as or represented as providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (3) The facility accepts or retains residents who demonstrate the need for care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (4) The facility represents itself as a licensed community care facility.

HANDBOOK ENDS HERE

87001 DEFINITIONS (Continued)**87001**

- (B) A facility which is "providing care and supervision" as defined in Section 87001c.(2) includes, but is not limited to, one in which an unemancipated minor has been placed for temporary or permanent care.
- (C) A facility which is "held out as or represented as providing care and supervision" includes, but is not limited to:
 - (1) A facility whose license has been revoked or denied, but the individual continues to provide care for the same or different clients with similar needs.
 - (2) A facility where change of ownership has occurred and the same clients are retained.
 - (3) A licensed facility that moves to a new location.
 - (4) A facility which advertises as providing care and supervision.
- (D) A facility which "accepts or retains residents who demonstrate the need for care and supervision" includes, but is not limit to a facility which houses unemancipated minors, even though the facility is providing board and room only, or board only, or room only.
- v. (1) "Ventilator-Dependent Child" means a child who for part or all of each day cannot sustain ventilation spontaneously at a level sufficient to prevent death or the development of life-threatening complications.
- w. (1) "Waiver" means a nontransferable written authorization issued by the licensing agency to use alternative means which meet the intent of a specific regulation which are based on a facility-wide need or circumstance.
- x. (Reserved)
- y. (Reserved)
- z. (Reserved)

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 319(d), 17710, 17710(a) and (g), 17731, 17731(c) and 17736(a), Welfare and Institutions Code and Sections 1337, 1501, 1502, 1503.5, 1505, 1507, 1507.5, 1520, 1522, 1524, 1524(e), 1525.1, 1526, 1526.5, 1527, 1530, 1530.5, 1530.6, 1531, 1531.5, 1533, 1534, 1536.1, 1537, 1550, 1551, 1727(c), and 11834.11, Health and Safety Code.

Article 2. LICENSE**87005 LICENSE REQUIRED****87005**

Unless a home is exempt from licensure as specified in Section 87007, no individual shall operate, establish, manage, conduct or maintain a foster family home, or hold out, advertise or represent by any means to do so, without first obtaining a current valid license from the licensing agency.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501, 1503.5, 1505, 1508, 1509, 1513 and 1531, Health and Safety Code.

87006 OPERATION WITHOUT A LICENSE**87006**

- (a) An unlicensed home is as defined in Section 87001u.(1), is in violation of Sections 1503.5 and/or 1508 of the Health and Safety Code unless exempted from licensure pursuant to Health and Safety Code Section 1505 or Section 87007.
- (b) If the home is alleged to be in violation of Sections 1503.5 and/or 1508 of the Health and Safety Code, the licensing agency shall conduct a site visit, and/or an evaluation of the home pursuant to Health and Safety Code 1533 and 1538.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1538(c) provides in part:

Upon receipt of a complaint, other than a complaint alleging denial of a statutory right to access to a community care facility, the state department shall make a preliminary review and, unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection within 10 days after receiving the complaint, except where a visit would adversely affect the licensing investigation or the investigation of other agencies. In either event, the complainant shall be promptly informed of the state department's proposed course of action.

HANDBOOK ENDS HERE

- (c) If the home is operating without a license, the licensing agency shall issue a notice of operation in violation of law and shall refer the case for criminal prosecution and/or civil proceedings.

87006 OPERATION WITHOUT A LICENSE (Continued)**87006**

- (d) The licensing agency shall issue an immediate civil penalty pursuant to Section 87055 and Section 1547 of the Health and Safety Code.

HANDBOOK BEGINS HERE

- (1) Section 1547 of the Health and Safety Code provides in part:

Notwithstanding any other provision of this chapter, any person who violates Section 1503.5 or 1508, or both, may be assessed by the department an immediate civil penalty in the amount of two hundred dollars (\$200) per day of violation.

The civil penalty shall be imposed if an unlicensed facility is operated and the operator refuses to seek licensure or the licensure application is denied and the operator continues to operate the unlicensed facility.

HANDBOOK ENDS HERE

- (e) Sections 87006(c) and (d) shall be applied pursuant to Section 1549 of the Health and Safety Code.

HANDBOOK BEGINS HERE

- (1) Section 1549 of the Health and Safety Code states:

The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed in any combination deemed advisable by the department to enforce this chapter.

HANDBOOK ENDS HERE

- (f) The licensing agency shall notify the appropriate placement or protective service agency if either of the following conditions exist:

- (1) There is an immediate threat to the clients' health and safety.
- (2) The facility does not submit an application for licensure within 15 calendar days of being served a notice of operation in violation of the law.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1503.5, 1505, 1508, 1533, 1538, 1540, 1540.1, 1541, 1547 and 1549, Health and Safety Code.

87007 EXEMPTION FROM LICENSURE**87007**

- (a) The provisions of this chapter shall not apply to the following:
- (1) Any health facility, as defined by Section 1250 of the Health and Safety Code.
 - (2) Any clinic, as defined by Section 1202 of the Health and Safety Code.
 - (3) Any family day care home providing care for the children of only one family, in addition to the operator's own children.
 - (4) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.
 - (5) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend on prayer or spiritual means for healing in the practice of the religion of such church or denomination.
 - (6) Any school dormitory or similar facility where all of the following conditions exist:
 - (A) The school is certificated/registered by the State Department of Education.
 - (B) The school and the school dormitory are on the same grounds.
 - (C) All children accepted by the school are six years of age or older.
 - (D) The program operates only during normal school terms unless the academic program runs year-round.
 - (E) The school's function is educational only.
 - (F) The school program is not designated as providing rehabilitative or treatment services.
 - (G) The school's function does not promote intent to provide community care services, and the family does not accept children who are in need of such services, including but not limited to children with developmental disabilities, mental disorders or physical handicaps; juveniles declared dependents of the court under Welfare and Institutions Code Section 300; and juveniles declared wards of the court under Welfare and Institutions Code Sections 601 and 602.

87007 EXEMPTION FROM LICENSURE (Continued)**87007**

- (H) The facility does not receive any public funds designated for care including but not limited to AFDC-FC and SSI/SSP. The facility shall be permitted to receive public funds intended for educational programs.
- (I) No public or private agency, including but not limited to county welfare departments and probation offices, provides social services to children in the facility.
- (7) Any house, institution, hotel, or other similar place that supplies board and room only, or room only, or board only, which provides no element of care and supervision, as defined in Section 87001c.(2).
- (8) Any recovery houses or other similar facility providing a group living arrangement for persons recovering from alcoholism or drug addiction which provides no element of care and supervision, as defined in Section 87001c.(2).
- (9) Any cooperative arrangement between parents for the day care of their children by one or more of the parents where no payment for the day care is involved, including but not limited to the exchange of child day care services between two or more families.
- (10) Any care and supervision of persons by a relative, guardian or conservator. A relative, for purposes of this section, shall include individuals as specified in Health and Safety Code Section 1505(k).

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- (A) Health and Safety Code Section 1505(k)

"...For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together."

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- (11) Any care and supervision of persons from only one family by a close friend of the parent, guardian or conservator, provided that such arrangement is not for financial profit and does not exceed 10 hours per week.

87007 EXEMPTION FROM LICENSURE (Continued)**87007**

- (A) Provision of longer hours of care shall not be precluded when provided for brief periods of time for reasons, including but not limited to family emergencies, vacation, and military leave.
- (12) Any facility exclusively used by a licensed or exempt homefinding agency and issued a certificate of approval by that agency.
 - (A) Such families shall not be required to obtain a license, but shall be in compliance with all other requirements set forth in this division. The facility's compliance with requirements shall be monitored through and assured by the homefinding agency. For the purposes of this section, an exclusive-use facility shall mean a nonlicensed residential facility that has been approved by a licensed homefinding agency as conforming to the regulations pertaining to the Family Home Category. A facility in the exclusive use of a licensed homefinding agency shall accept only those children placed by that agency which approved the home.
- (13) A home which meets all of the following criteria:
 - (A) approved by a licensed adoption agency, or the Department, for the adoptive placement of a child, and
 - (B) the child is legally free for adoption, and
 - (C) the agency or the Department is providing supervision of the placement pending finalization of the adoption.

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Being exempt from licensure does not preclude a home from being licensed.

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87007 EXEMPTION FROM LICENSURE (Continued)**87007**

(14) A home which meets all of the following criteria:

- (A) placement for adoption by a birth parent, and
- (B) a petition for adoption has been filed by the prospective adoptive parents, and is pending, and
- (C) a final decision on the petition has not been rendered by the court.

HANDBOOK BEGINS HERE

Being exempt from licensure does not preclude a home from being licensed.

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(15) Any similar facility as determined by the Director.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1505, 1505(k), 1506, 1508, 1530, 1530.5, 1536.1, Health and Safety Code; Sections 226.2, 226.5 and 226.6, Civil Code; and Sections 319(d), 362, 727 and 16100, Welfare and Institutions Code.

87007.1 CERTIFIED LICENSE PENDING HOMES**87007.1**

- (a) Emergency placements of specific children without special health care needs shall be permitted in a Certified License Pending Home when all of the following requirements have been met:
 - (1) Placement in a licensed home is not immediately available, or does not meet the child's service needs.
 - (2) The unlicensed home has been certified by a probation officer or social worker as meeting the minimum standards for foster family homes.

87007.1	CERTIFIED LICENSE PENDING HOMES (Continued)	87007.1
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- (3) The unlicensed home has an application pending for a foster family home license.
- (4) The licensing agency has not disapproved the application for a license nor has the application been withdrawn.
- (5) Placements are made pursuant to Welfare and Institutions Code Sections 362(b), 362.5(c) or 727(b).
- (b) If the license application is denied by the licensing agency after placement of a child, such denial shall constitute withdrawal of the certification and the child shall be immediately removed from the home.

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Sections 1530 and 1530.5, Health and Safety Code. Reference: Section 1505, Health and Safety Code; and Sections 362, 362.5, 727 and 17710(i), 17736, and 17736(b), Welfare and Institutions Code.

87009	AVAILABILITY OF LICENSE	87009
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- (a) The license shall be retained in the home and be available for review upon request.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code.

87010 LIMITATIONS ON CAPACITY AND AMBULATORY STATUS**87010**

- (a) The licensee shall not operate a home beyond the conditions and limitations specified in the license, including the capacity limitation.
- (b) The licensee shall not accept more than two infants, including infants in the licensee's family, without additional household help.
- (c) The licensee shall not place nonambulatory children in any room approved to accommodate only ambulatory children.
 - (1) Children whose condition becomes nonambulatory shall not remain in rooms restricted to ambulatory children.
 - (2) The licensing agency shall have the authority to require children who are accommodated in ambulatory rooms to demonstrate that they are ambulatory.
- (d) The licensee shall not accept more than one ventilator-dependent child.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501, 1507.5 and 1531, Health and Safety Code.

**87010.1 LIMITATIONS ON CAPACITY FOR SPECIALIZED FOSTER
FAMILY HOMES****87010.1**

- (a) No more than two children with or without special health care needs shall reside even on a temporary basis in a specialized foster family home with the following exceptions:
 - (1) A specialized foster family home may accept a third child with or without special health care needs provided that the licensed capacity, as determined by the licensing agency under Section 87028 is not exceeded, and all of the following conditions are met:
 - (A) The county social worker, regional center caseworker or authorized representative responsible for the placement of the child determines the following:
 - 1. That in the county or, if the child is a regional center client, the regional center catchment area, in which the facility is physically located,
 - a. No other specialized foster family home, small family home or certified family home is available to meet the needs of the child without exceeding the two child limit; and

87010.1 LIMITATIONS ON CAPACITY FOR SPECIALIZED FOSTER FAMILY HOMES (Continued)**87010.1**

- b. If the child does not have special health care needs, that no other nonspecialized foster family home, small family home or certified family home is available to meet the needs of the child.
 - (B) Each child's county social worker, regional center caseworker or authorized representative determines that the specialized foster family home can meet the psychological and social needs of the child.
 - 1. New determinations are required each time there is an increase or turnover in children and the two-child capacity limit is exceeded.
 - (C) The individualized health care plan team for each child with special health care needs determines that the two-child capacity limit may be exceeded without jeopardizing the health and safety of the child.
 - 1. New determinations are required each time there is an increase or turnover in children and the two-child capacity limit is exceeded.
- (b) A licensee shall not accept a child requiring in-home health care other than family health care, unless the child is a child with special health care needs.

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Section 1530, Health and Safety Code. Reference: Sections 17732, 17732(a) and 17736(b), Welfare and Institutions Code and Sections 1502(a), 1507 and 1507.5, Health and Safety Code.

87010.2 PROHIBITION OF DUAL LICENSURE FOR SPECIALIZED FOSTER FAMILY HOMES**87010.2**

- (a) A foster family home licensee shall not hold any day care, other residential or health care facility license for the same premises as the foster family home while caring for children with special health care needs.
 - (1) Any foster family home licensee planning to care for a child with special health care needs who holds any license as specified in (a) above shall surrender the license prior to accepting a child with special health care needs.

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Section 1530, Health and Safety Code. Reference: Section 17732, Welfare and Institutions Code and Section 1531, Health and Safety Code.

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87012	FALSE CLAIMS	87012
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- (a) No licensee shall make or disseminate any false or misleading statement regarding the family home or any of the services provided by the home.
- (b) No licensee shall alter, or disseminate any alteration to any foster family home license.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501, 1508 and 1531, Health and Safety Code.

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Article 3. APPLICATION PROCEDURES**87017 APPLICANT QUALIFICATIONS****87017**

- (a) Any adult shall be permitted to apply for a license regardless of age, sex, race, religion, color, political affiliation, national origin, handicap, marital status, or sexual orientation.
- (b) An applicant shall have the following qualifications:
 - (1) Ability to provide care and supervision appropriate to the type of children to be served including ability to communicate with the children.
 - (2) Knowledge of and ability to comply with the applicable laws and regulations.
 - (3) Ability to maintain, or supervise the maintenance of, financial and other records.
 - (4) Ability to direct the work of others when applicable.
- (c) An applicant for a foster family home license shall:
 - (1) Attend and complete an orientation provided by the licensing agency.
 - (2) Be educated, trained, or experienced in areas related to the qualifications specified in (b) above.
 - (A) Applicable education shall be documented through submission, to the licensing agency, of a copy of a certification, transcript or credentials.
 - (B) Applicable training shall be documented through submission, to the licensing agency of a copy of a certificate of training.
 - (C) Applicable experience shall be documented in writing, by a person other than the applicant, and submitted to the licensing agency.

87017 APPLICANT QUALIFICATIONS (Continued)**87017**

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- (d) The following are examples of course, seminar, conference or training topics which will be accepted by the licensing agency to meet the requirements in (c) above and Section 87032(c). Programs which can be shown to be similar will also be accepted.
- (1) Child development
 - (2) Recognizing and/or dealing with learning disabilities
 - (3) Infant care and stimulation
 - (4) Parenting skills
 - (5) Complexities, demands and special needs of children in placement
 - (6) Building self-esteem, for the licensee or the children
 - (7) First aid and/or CPR
 - (8) Recordkeeping
 - (9) Bonding and/or safeguarding of children's property
 - (10) Licensee rights and grievance process
 - (11) Licensing and placement regulations
 - (12) Rights and responsibilities of foster family home providers

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NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501, 1520 and 1531, Health and Safety.

87018 APPLICATION FOR LICENSE**87018**

- (a) Any adult desiring to obtain a license shall file, with the licensing agency, a verified application on forms furnished by the licensing agency.
- (b) The applicant/licensee shall cooperate with the licensing agency in providing verification and/or documentation as requested by the licensing agency.
- (c) The application and supporting documents shall contain the following:
 - (1) Name and home address of the applicant.
 - (2) Name and address of owner of premises if applicant is leasing or renting.

87018 APPLICATION FOR LICENSE(Continued)**87018**

- (3) Maximum number of children to be served.
- (4) Age range, sex and the categories of children to be served, including but not limited to children with disabilities, if any.
- (5) Information required by Health and Safety Code Section 1520(d).

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- (A) Information regarding the applicant's prior or present service as a licensee, an administrator, general partner, corporate officer or director, or beneficial owner of 10 percent or more, of any community care facility or in any facility licensed pursuant to Chapter 1, commencing with Section 1200, or Chapter 2, commencing with Section 1250, of the Health and Safety Code.

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- (6) Information required by Health and Safety Code Section 1520(e).

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- (A) Information regarding any revocation or temporary suspension action taken or in the process of being taken against a license held or previously held by the applicant or while the applicant served in any of the capacities specified in (5) above.

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- (7) Name, address and telephone number of the city or county fire department, the district providing fire protection services, or the State Fire Marshal's Office having jurisdiction in the area where the facility is located.

87018 APPLICATION FOR LICENSE (Continued)**87018**

- (8) A plan of operation as specified in Section 87022.
- (9) Fingerprint cards as specified in Section 87019.
- (10) Information required by Health and Safety Code Section 1522.1.

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- (A) Prior to granting a license to, or otherwise approving, any individual to care for children, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code. The department shall investigate any reports received from the Child Abuse Registry. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency which investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry unless child abuse is substantiated.

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- (11) The bonding affidavit specified in Section 87025.
- (12) A health screening report on the applicant, meeting the standards required in Section 87065(d).
- (13) Such other information as may be required pursuant to Section 1520(g) of the Health and Safety Code.
- (d) The application shall be signed by the applicant.
- (e) The application shall be filed with the licensing agency which services the geographical area in which the home is located.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501, 1520, 1522.1, and 1531, Health and Safety Code.

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87019 CRIMINAL RECORD CLEARANCE**87019**

- (a) The licensing Department shall conduct a criminal record review of all individuals specified in Health and Safety Code Section 1522(b) and shall have the authority to approve or deny a foster family home license, or employment, residence, or presence in the home, based upon the results of such review.

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- (1) Section 1522(b) of the Health and Safety Code provides in part:

In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a client, residing in the facility.
- (C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained or contracted by the licensee, and who has been certified or re-certified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. Nothing in this paragraph restricts the right of the Department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.
- (D) Any staff person, volunteer, or employee who has contact with the clients. A volunteer shall be exempt from the requirements of this subdivision if the volunteer is a relative of a client in care at the facility and is not used to replace or supplant staff in providing direct care and supervision of clients.

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- (b) The following persons are exempt from the requirement to submit fingerprints:

- (1) A medical professional, as defined by the Department in regulations, who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:

87019 CRIMINAL RECORD CLEARANCE (Continued)

87019

- (A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.
 - (B) The individual is providing time-limited specialized clinical care or services.
 - (C) The individual is providing care or services within the individual's scope of practice.
 - (D) The individual is not a community care facility licensee or an employee of the facility.
- (2) A third-party repair person, or similar retained contractor, if all of the following apply:
- (A) The individual is hired for a defined, time-limited job.
 - (B) The individual is not left alone with clients.
 - (C) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or resident's legal decision maker.
- (A) The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.
- (4) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client.
- (A) This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.
- (5) Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply:
- (A) Members are not left alone with the clients.
 - (B) Members do not transport clients off the facility premises.
 - (C) The same group does not conduct such activities more often than once a month.

87019 CRIMINAL RECORD CLEARANCE**87019**

- (6) A volunteer, if all of the following apply:
 - (A) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (B) The volunteer is never left alone with clients.
 - (C) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene other than washing of hands.
 - (7) The following persons in foster family homes and certified family homes:
 - (A) Adult friends and family of the licensee who come into the home to visit, for a length of time no longer than one month, provided they are not left alone with the children.
 - (B) Parents of a child's friends when the child is visiting the friend's home and the friend, foster parent or both are also present.
 - (8) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.
- (c) Prior to the Department issuing a license or special permit to any individual or individuals to operate or manage a foster family home or certified family home, the applicant, administrator, and any adults residing in the home shall obtain a California criminal record clearance or exemption as specified in Health and Safety Code Section 1522(d)(1)(D).

87019 CRIMINAL RECORD CLEARANCE (Continued)

87019

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- (1) Section 1522(d)(1)(D) of the Health and Safety Code states:

An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

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- (d) Prior to employment, residence or initial presence in a foster family home, all individuals subject to criminal record review shall be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions and arrests for any crime against a child, spousal cohabitant abuse, or for any crime for which the Department cannot grant an exemption. The declaration shall acknowledge and explain criminal convictions and arrests. The declaration shall also acknowledge that his/her continued employment, residence, or presence in the facility is subject to approval of the Department.
- (1) A foster family home applicant/licensee shall submit the fingerprints to the California Department of Justice along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation or to comply with Section 87019(d), prior to the individual's employment, residence, or initial presence in the facility.
- (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the Department.
- (B) A licensee's failure to submit fingerprints to the California Department of Justice or to comply with Section 87019(d) shall result in the citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation.
1. The licensee shall then submit the fingerprints to the California Department of Justice for processing.

87019 CRIMINAL RECORD CLEARANCE (Continued)**87019**

- (2) To continue to be employed, reside, or be present in a community care facility, each individual shall:
 - (A) Be exempted from fingerprinting by statute or regulation.
 - (B) Have a criminal record clearance or
 - (C) Have a criminal record exemption approved by the Department.
- (e) Unless otherwise exempted from the fingerprint requirements in Health and Safety Code Section 1522(b), any staff person, volunteer, or employee who has client contact and any resident, other than a client, must submit fingerprints.
- (f) An individual may request a transfer of their criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents:
 - (1) A signed written request to the Department.
 - (2) A copy of the individual's driver's license, or
 - (3) A valid identification card issued by the Department of Motor Vehicles, or
 - (4) A valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (5) Any other documentation required by the Department (i.e., LIC 508, Criminal Record Statement [Rev. 3/99] and job description).
- (g) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (h) If the criminal record transcript of any of the individuals specified in Health and Safety Code Section 1522(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than \$300, and an exemption pursuant to Section 80019.1(a) has not been granted, the Department shall take the following actions:
 - (1) For initial applicants, denial of the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For other individuals, exclusion of the affected individual pursuant to Health and Safety Code Section 1558, and denial of the application or revocation of license, if the individual continues to provide service and/or reside in the home.

87019 CRIMINAL RECORD CLEARANCE (Continued)**87019**

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(4) Section 243.4 of the Penal Code provides in part:

- (A) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
- (B) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

(5) Section 273a of the Penal Code provides:

- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 3 or 4 years.
- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(6) Section 273(d) of the Penal Code provides:

Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4 or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

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- (7) Section 368 of the Penal Code provides:
- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.
- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.
- (8) Section 1522(d) of the Health and Safety Code provides in part:
- If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.
- (9) Section 1522(e) of the Health and Safety Code provides in part:
- The California Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

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87019 CRIMINAL RECORD CLEARANCE (Continued)**87019**

- (i) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees and volunteers that require fingerprinting and non-client adults residing in the facility.

- (1) Documentation shall be available for inspection by the Department.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1522 and 1531, Health and Safety Code; and Section 42001, Vehicle Code.

87019.1 CRIMINAL RECORD EXEMPTION**87019.1**

- (a) After a review of the criminal record transcript, the Department may grant an exception from Section 87019(b) or (c)(2) if:

- (1) The applicant/licensee requests an exemption for himself or herself, or
- (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
- (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
- (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment, presence, or residence in a licensed facility.

- (b) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:

- (1) The nature of the crime.
- (2) Period of time since the crime was committed and number of offenses.
- (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
- (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
- (5) Granting by the Governor of a full and unconditional pardon.
- (6) Character references.
- (7) A certificate of rehabilitation from a superior court.

87019.1 CRIMINAL RECORD EXEMPTION (Continued)**87019.1**

- (8) Evidence of honesty and truthfulness as revealed in exemption application documents.
- (A) Documents include, but are not limited to:
1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 3/99]) and
 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.
- (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.

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- (c) Section 1522(g) of the Health and Safety Code provides in part:
- (1) Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, or subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a, Sections 273d, 288, 289 or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certification of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.
- (d) Section 667.5(c) of the Penal Code provides in part:
- (1) For the purpose of this section, "violent felony" shall mean any of the following:
- (A) Murder or voluntary manslaughter.
- (B) Mayhem.
- (C) Rape as defined in subdivision (2) of Section 261.

HANDBOOK CONTINUES

87019.1 CRIMINAL RECORD EXEMPTION (Continued)**87019.1****HANDBOOK CONTINUES**

- (D) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (E) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (F) Lewd acts on a child under 14 as defined in Section 288.
- (G) Any felony punishable by death or imprisonment in the state prison for life.
- (H) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.
- (I) Any robbery perpetrated in an inhabited dwelling house or trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.
- (J) Arson, in violation of subdivision (a) of Section 451.
- (K) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (L) Attempted murder.

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- (e) The Department may deny an exemption request if:
 - (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or
 - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (f) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (g) The Department may grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.

87019.1 CRIMINAL RECORD EXEMPTION (Continued)**87019.1**

- (h) An individual shall be permitted to transfer a current criminal record exemption from one state licensed facility to another provided the exemption has been processed through a state licensing district office and the following are met:
- (1) The request is in writing to the Department and includes:
 - (A) A copy of the individual's driver's license, or
 - (B) A valid identification card issued by the Department of Motor Vehicles, or
 - (C) A valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (D) Any other documentation required by the Department (i.e., LIC 508, Criminal Record Statement [Rev. 3/99] and job description).
 - (i) If the Department denies the individual's request to transfer a conditional criminal record exemption, the Department shall provide the individual with a right to an administrative hearing to contest the Department's decision.
 - (j) The Department shall take the following actions if a criminal record exemption is not or cannot be granted:
 - (1) For initial applicants, denial of the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current or prospective employees, exclusion of the affected individual pursuant to Health and Safety Code Section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.
 - (4) For individuals residing in the facility, licensee or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1558, and denial of the application or revocation of the licensee, if the individual continues to provide services and/or reside at the facility.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1522, 1531, and 14564, Health and Safety Code.

87019.2 CHILD ABUSE INDEX**87019.2**

- (a) Prior to the Department issuing a license or special permit for a foster family home, the Department shall conduct a Child Abuse Central Index (CACI) review pursuant to Health and Safety Code Section 1522.1 and Penal Code Section 11170(b)(3). The Department shall check the CACI for the applicant(s) and all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1522(d) and shall have the authority to approve or deny a facility license, permit, certificate, employment, residence, or presence in the facility based on the results of the review.
- (1) The applicant shall submit the Child Abuse Central Index check (LIC 198A [3/99]) for all individuals required to be checked directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 87019(b).
- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(h).
- (2) The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
- (b) Subsequent to licensure, all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1522(b), shall complete a Child Abuse Central Index check (LIC 198A) prior to employment, residence, or initial presence in the facility that cares for children.
- (1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A) directly to the California Department of Justice with the individual's fingerprints as required by Section 87019(b) prior to the individual's employment, residence or initial presence in the facility.
- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(h).
- (2) The Department shall check the CACI pursuant to Penal Code Section 1170(b)(3), and shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

87019.2 CHILD ABUSE INDEX (Continued)**87019.2**

- (3) The Department shall investigate any subsequent reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not revoke a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1522, 1531, and 14564, Health and Safety Code.

87020 FIRE CLEARANCE**87020**

- (a) Prior to accepting a disabled child, or deciding to continue to provide services to a child determined after placement to have a disability, the licensee shall notify the licensing agency so that a fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal, can be obtained.
- (1) The request for fire clearance shall be made through and maintained by the licensing agency.

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- (2) Health and Safety Code Section 13143 provides generally:

A fire clearance shall not be required if the foster family home is providing care for:

- (A) six or fewer ambulatory children, and/or
- (B) children two years of age or younger.

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NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code.

87021 WATER SUPPLY CLEARANCE**87021**

- (a) Any home where water for human consumption is from a private source shall meet the following requirements:
- (1) As a condition of initial licensure, the applicant shall provide evidence of an on-site inspection of the source of the water and a bacteriological analysis which establishes the safety of the water, conducted by the local health department, the State Department of Health or a licensed commercial laboratory.
- (2) Subsequent to initial licensure, the licensee shall be required to provide additional analyses only when the licensing agency documents the need for an analysis to assure the health and safety of the children.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code. Reference: Sections 1501, 1520 and 1531, Health and Safety Code.